

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

January 3, 2006

CALL TO PODIUM:

Fred Felton
Assistant City Manager

RESPONSIBLE STAFF:

Fred Felton
Assistant City Manager

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
	Ordinance
X	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:

Resolution of the Mayor and City Council Authorizing the City Manager to Negotiate and Execute a Memorandum of Understanding with Montgomery County on the Expenditure of Development Impact Taxes

SUPPORTING BACKGROUND:

The Montgomery County Council enacted Bill No. 47-01 entitled "Development Impact Tax - Amendments" in March of 2002. This Bill requires that developers County wide pay an impact tax to fund transportation improvements; however, at the request of Gaithersburg and Rockville, the Bill was amended to require that funds collected from construction projects in the major municipalities could only be spent in accordance with a Memorandum of Understanding (MOU) agreed to by the jurisdictions.

In September of 2002, both Gaithersburg and Rockville negotiated Memorandums of Understanding with the County Department of Public Works and Transportation; however, the County Council did not approve either MOU because they included State projects.

Staff has been working with Montgomery County on a new MOU, and we are recommending that the MOU provide that impact tax funds may be expended on the following projects:

- a) Watkins Mill Road Extended between MD 355 and I-270
- b) Watkins Mill Road Extended between MD 117 and I-270
- c) Teachers Way Extended as identified in the Olde Towne Plan
- d) Victory Farm Drive Extended as identified in the Old Towne Plan
- e) Sidewalk and Bike Paths as identified in the Gaithersburg CIP 79-3
- f) Bus Shelters and benches at bus stops as identified in Gaithersburg CIP 98-7

For your review, I have enclosed a draft copy of the proposed MOU. Staff believes the proposed MOU is a fair and equitable agreement.

The attached resolution would authorize the City Manager to execute the Memorandum of Understanding.

DESIRED OUTCOME:

Approve resolution.

RESOLUTION NO. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY
MANAGER TO NEGOTIATE AND EXECUTE A
MEMORANDUM OF UNDERSTANDING WITH MONTGOMERY
COUNTY ON THE EXPENDITURE OF DEVELOPMENT IMPACT TAXES

WHEREAS, On March 12, 2002 the Montgomery County Council enacted Amendments to the Development Impact Tax, Article VII, Chapter 52, of the Montgomery County Code ("Impact Tax Law"), establishing impact tax districts for the Cities of Gaithersburg and Rockville, as well as the entire County; and

WHEREAS, the newly-adopted amendments provide for separate accounting of development impact taxes collected from developments located in the cities of Gaithersburg and Rockville, as well as provisions for, in certain instances, refunds and credits; and

WHEREAS, tax revenues collected from, and separately accounted for, the respective municipalities must be used to fund transportation improvements listed in an MOU between the County and the City, and approved by the Montgomery County Council; and

WHEREAS, the City Manager has held a series of meetings with representatives from Montgomery County Department of Public Works and Transportation and negotiated the inclusion of various transportation improvements in a draft Memorandum of Understanding; and

WHEREAS, the Mayor and City Council have determined that it is in the best interests of the City to execute a Memorandum of Understanding for the expenditure of development impact taxes;

NOW THEREFORE, BE IT RESOLVED, by the Mayor and City Council of Gaithersburg, that the City Manager is authorized and directed to negotiate and execute a Memorandum of Understanding with Montgomery County on the expenditure of development impact taxes collected from development projects within the City of Gaithersburg.

ADOPTED by the City Council this 3rd day of January, 2006.

SIDNEY A. KATZ, MAYOR and
President of the Council

THIS IS TO CERTIFY that the foregoing
Resolution was adopted by the City Council
in public meeting assembled on the 3rd
day of January, 2006.

David B. Humpton, City Manager

MEMORANDUM of UNDERSTANDING
Development Impact Taxes

THIS MEMORANDUM OF UNDERSTANDING (the "MOU"), is made and entered into this _____ day of _____, 2005 and is effective from and after the date of the last signature on the signature page, by and among the Mayor and Council of Gaithersburg ("City"), an incorporated municipality in Montgomery County, in the State of Maryland, and Montgomery County, Maryland, a body corporate and politic ("County").

WITNESSETH:

WHEREAS, On March 12, 2002, and effective July 1, 2002, the Montgomery County Council enacted Amendments to the Development Impact Tax, Article VII, Chapter 52, of the Montgomery County Code ("Impact Tax Law"), establishing impact tax districts for the Cities of Gaithersburg and Rockville, as well as the entire County.

WHEREAS, the newly-adopted amendments provide for separate accounting of development impact taxes collected from developments located in the cities of Gaithersburg and Rockville, as well as provisions for, in certain instances, refunds and credits.

WHEREAS, tax revenues collected from, and separately accounted for, the respective municipalities must be used to fund transportation improvements listed in an MOU between the County and the City, and approved by the Montgomery County Council.

WHEREAS, it is the intent of the County to further the public purpose of ensuring that an adequate transportation system is available in support of new development.

WHEREAS, the City recognizes the need to fund transportation improvements within City limits to support growth and development

WHEREAS, as provided for in the Impact Tax Law, the City may enter into an MOU with the County, which will include a list of transportation improvements for priority funding with Impact Tax revenues collected from developments within the City limits.

WHEREAS, the City and the County agree that it is in the best interest of the City to enter into and agree to the terms and conditions of this MOU.

WHEREAS, the City has authorized the City Manager to enter into this MOU on behalf of the City.

NOW, THEREFORE, in consideration of the above and the mutual promises hereinafter set forth, the parties hereto agree as follows:

1) In accordance with the provisions of Section 52-49(e) of the Montgomery County Code, the parties agree that the development impact taxes collected from developments located in the City must only be used to fund the transportation improvements that meet the following criteria:

- a) Improvements should be consistent with the approved and adopted City Master Plan or Neighborhood Plan; and
- b) Contained in an adopted City Capital Improvements Program; or
- c) Approved as a condition of a City development approval when the improvement is for an offsite improvement that meets the criteria contained in Section 52-58(d) or is an on-site arterial highway.

Below is the list of eligible transportation projects. FY 2006 Capital Improvements Program projects include the CIP project number, and the remaining improvements are either listed in the Adopted 2002 Comprehensive Master Plan or are under consideration for small scale capacity improvements. Impact Tax funds can be used only on the portions of the road projects listed below that creates new capacity in accordance with Section 52-58(d). Impact Tax funds can not be used for any improvement to or other action limited to a State road. Where the City or County has required a developer to fund all or part of an improvement, use of County impact tax funds must not replace the obligation of the developer to provide such an improvement. However, the developer may be eligible for a credit subject to approval by MC DPWT. The City may update this list on a semi-annual basis by providing MC DPWT with a revised list without amending this MOU. Any revised list shall be approved by the County Council.

- a) Watkins Mill Road Extended between MD 355 and I-270;
 - b) Watkins Mill Road Extended between MD 117 and I-270;
 - c) Teachers Way Extended as identified in the Olde Towne Plan;
 - d) Victory Farm Drive Extended as identified in the Old Towne Plan;
 - e) Sidewalk and Bike Paths as identified in the Gaithersburg CIP 79-3;
 - f) Bus Shelters and benches at bus stops as identified in Gaithersburg CIP 98-7.
- 2) (Impact taxes collected within the City shall be appropriated or otherwise formally designated for the above-listed projects as impact tax revenues become available, in accordance with the Impact Tax Law, and in all instances, by the end of the sixth fiscal year after the tax is collected.
- 3) The City will notify the County when a commencement of an eligible transportation project is authorized by the City. The County shall provide available funds from the City impact tax account within 30 days. If the available funds in the City impact tax account are insufficient to totally fund the project and the City pays the balance of the project cost, then the County will forward the difference on a quarterly basis to the

City upon receipt of eligible payments to the City impact tax account up to the full amount of the project cost.

- 4) The Chief Administrative Officer of Montgomery County and the City Manager of Gaithersburg are authorized to execute such further documents and agreements that they determine to be necessary to implement this MOU and the Impact Tax Law.
- 5) Dispute/Resolution: In the event a dispute arises as to the interpretation or implementation of the Impact Tax law which cannot be resolved, the parties agree that the matter will be referred to the City Manager and the CAO of Montgomery County for consideration, review and resolution. If the City Manager and the CAO are unable to resolve the dispute they may agree to submit the dispute to mediation or binding arbitration or file an appropriate action in the Circuit Court of Montgomery County for resolution of the dispute.
- 6) This MOU shall be considered for amendments as proposed by either party, from time to time.

IN WITNESS WHEREOF, the CITY and the COUNTY have executed and sealed this MOU as of the date first written above.

WITNESS:

THE MAYOR AND COUNCIL OF
GAITHERSBURG,
a municipal corporation

By: _____

Date: _____

WITNESS:

COUNTY OF MONTGOMERY, MARYLAND

By: _____

Date: _____